# In the Supreme Court of the United States

OCTOBER TERM, 1950

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No. —

UNITED STATES OF AMERICA AND ELEUTERIA BROWN ARENAS, ALSO KNOWN AS DELLA NICHOLSON, PETITIONERS

*v.*

JOHN W. PRESTON, OLIVER O. CLARK, AND DAVID D. SALLEE

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

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The Solicitor General, on behalf of the United States and Eleuteria Brown Arenas, prays that a writ of certiorari issue to review the judgment entered on March 23, 1950, by the United States Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

The opinion of the District Court (R. 41-48) is not reported. The opinion of the Court of Appeals (R. 284-285) is reported at 181 F. 2d 69.

JURISDICTION

The judgment of the Court of Appeals, affirming in part the judgment of the District Court, was entered on March 23, 1950 (R. 285-286). The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254(1).

STATEMENT[1]

This is a companion case to that of *United States and Lee Arenas* v. *John W. Preston, et al.*, in which the Government has simultaneously herewith filed a petition for a writ of certiorari. It involves the same parties, with the exception of the Indian allottee, and the same legal issues. The facts herein may be briefly stated as follows:

After the district court had found that Lee Arenas was entitled to trust allotments and the court of appeals had affirmed in part, respondents filed a complaint for trust patent on behalf of Eleuteria Brown Arenas (R. 74, 176-177), their contract of employment providing, as in the case of Lee Arenas, for payment on a *quantum meruit* basis, "all to be subject to the rules and regulations of the Department of the Interior" (R. 180-181). The district court entered judgment in favor of the Indian allottee, and no appeal was prosecuted (R. 11, 29). Thereupon, respondents filed their petition for supplemental decree for attorneys'

[1] The question presented herein, and the pertinent statutory provisions involved, are identical with those in the companion *Lee Arenas* petition.

fees and expenses advanced (R. 2-14), and the Indian and the United States were ordered to show cause why the relief sought should not be granted (R. 15-16). The Government's motion to dismiss (R. 16-19) was denied (R. 64), and answers were filed by the allottee (R. 26-33) and lodged by the United States (R. 34-41, 64, 82-83), denying any jurisdiction in the court to affect the allotment in any way. On January 3, 1949, the court filed its opinion holding that it had jurisdiction to make an allowance for attorneys' fees and expenses by virtue of its general equity jurisdiction as invoked by the 1894 Act and that the United States was not an indispensable party to the proceeding inasmuch as the judgment ran against only the Indian and her allotment (R. 41-48, 64). Findings of facts and conclusions of law were filed (R. 49-55) conforming generally to the opinion. The court found that respondents were entitled to receive 12½% of the value of the allotment as fees and an additional amount as reimbursement for expenses (R. 51-52), but no finding was made as to the value of the allotment except that, as alleged in the petition, it was in excess of $300,000 (R. 7, 51). It was also found that respondents were entitled to a lien on the allotment and that it was reasonable and equitable that the allotment be sold and the proceeds divided between the allottee and respondents (R. 52-53). A judgment (R. 56-62) was entered, which went farther than that in the

*Lee Arenas* case by making provision for an immediate sale of the lands (R. 59-60).[2]

Upon appeal the court below affirmed in part and reversed in part (R. 284-285). It disagreed with the district court's theory that the allotment was free from any interest of the United States, and also as to the amount awarded as reimbursement for expenses advanced. However, it agreed, as in the *Lee Arenas* case, that the district court had jurisdiction to make an allowance for attorneys' fees out of the allotment, and remanded the case with instructions to proceed to fix the attorneys' fee and secure its payment by a lien, all to be in accord with its expressions in the *Lee Arenas* case (R. 285-286). The court also pointed out that the lien should be foreclosable only after a reasonable period had elapsed in which payment could be made (R. 285).

#### REASONS FOR GRANTING THE WRIT

This case presents exactly the same legal questions and involves the same respondents as the case of *United States and Lee Arenas* v. *John W. Preston, et al.* In the petition for certiorari filed in that case, the Government has set forth at length its reasons for believing that review of the issues involved is warranted. The Court is respectfully referred, therefore, to the *Lee Arenas* petition.

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[2] The fee proceeding in the *Lee Arenas* case was heard by Judge Mathes, while Judge Cavanah presided in the instant case.

## CONCLUSION

It is respectfully submitted that this petition for certiorari should be granted.

PHILIP B. PERLMAN,
*Solicitor General.*

JUNE 1950.

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